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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,658	04/16/2001	Sofia Yeung	50277-1010	3688

7590 07/02/2002

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EXAMINER

FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/834,658

Applicant(s)

YEUNG ET AL.

Examiner

Jean B Fleurantlin

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-- Th MAILING DATE of this communication appears on the cov r sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 22 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is canceled. And 2-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Claim 1 is canceled.

Claims 39-41 are added.

Claims 2-41 are presented for examination.

#### ***Drawings***

2. The Formal drawings are required in response to this Office Action.

#### ***Double Patenting***

3. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

Claims 2-38 of the present Application Serial Number 09/834,658 read the same as claims 2-38 of the US Patent Number 6,240,428.

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

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4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 39 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 41 of Yeung (U.S. Patent No. 6,240,428). Although the conflicting claims are not identical, they not patentably distinct from each other because: claims 39 and 41 recite the same only storing a corresponding marker descriptive of said each of the selected partitions in the dump file and storing data contained in said each of the selected partitions in the dump file claim in the application file number 09/834,658 as claim 41.

The difference between claim 41 of the US No. 6,240,428, Patent and the claim 39 of the No. 09/834,658 application is follow as:

the patent claim 41, recites the steps of: a method of exporting data from a table into a dump file, said being subdivided into a plurality of partitions, comprising the steps of:

selecting a fewer number of the partitions than the number of the plurality of partitions;

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for each of the selected partitions, storing a corresponding marker descriptive of said each of the selected partitions in the dump file and storing data contained in said each of the selected partitions in the dump file.

The application claim 39, recites steps of: a method of exporting data from a table into a dump file, said table being subdivided into a number of partitions, said method comprising the steps of: selecting a fewer number of partitions than the number of partitions; and for each of the selected partitions, storing in the dump file data contained in said each of the selected partitions, wherein data contained in a partition that is not selected is not stored in the dump file.

The patent claimed for each of the selected partitions, storing a corresponding marker descriptive of said each of the selected partitions in the dump file and storing data contained in said each of the selected partitions in the dump file. Thus, the application claimed for each of the selected partitions, storing in the dump file data contained in said each of the selected partitions, wherein data contained in a partition that is not selected is not stored in the dump file would have been obvious to the patent claimed for each of the selected partitions, storing a corresponding marker descriptive of said each of the selected partitions in the dump file and storing data contained in said each of the selected partitions in the dump file.

Claim 41 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Yeung (US Pat. No. 6,240,428).

As per claim 41, Yeung (US Pat. No. 6,240,428) substantially teaches all the limitations recited in the application, but Yeung does not explicitly indicate steps for each of the selected

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partitions, storing in the dump file data contained in said each of the selected partitions, wherein data contained in a partition that is not selected is not stored in the dump file. However, Yeung (US Pat. No. 6,240,428) implicitly teaches steps of for each of the selected partitions, storing a corresponding marker descriptive of said each of the selected partitions in the dump file and storing data contained in said each of the selected partitions in the dump file (see col. 16, lines 23-27). Thus, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention was made to modify the teaching of Yeung (US Pat. No. 6,240,428) with steps for each of the selected partitions, storing in the dump file data contained in said each of the selected partitions, wherein data contained in a partition that is not selected is not stored in the dump file. This modification would allow the teaching of Yeung (US Pat. No. 6,240,428) to improve the quality import/export and repartitioning of partitioned objects, and provide import and export operations to transfer data to or from another database system or another version of the same database system (see col. 1, lines 10-12).

As per claims 40 and 41 of the application 09/834,658, the limitations of claims 40 and 41 are recited exactly the same in Yeung (US Pat. No. 6,240,658) as in claims 41 and 26.

### ***Conclusion***

5. Any inquiry concerning this communication from examiner should be directed to Jean Bolte Fleurantin at (703) 308-6718. The examiner can normally be reached on Monday through Friday from 7:30 A.M. to 6:00 P.M.

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If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Mrs. KIM VU can be reached at (703) 305-8449. The FAX phone numbers for the Group 2100 Customer Service Center are: *After Final* (703) 746-7238, *Official* (703) 746-7239, and *Non-Official* (703) 746-7240. NOTE: Documents transmitted by facsimile will be entered as official documents on the file wrapper unless clearly marked "**DRAFT**".

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2100 Customer Service Center receptionist whose telephone numbers are (703) 306-5631, (703) 306-5632, (703) 306-5633.



Jean Bolte Fleurantin

June 27, 2002

JBF/



**JEAN M. CORRIELUS**  
**PRIMARY EXAMINER**